IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.8186 OF 2006

Smt.Vijaya Kamalakar Dighe, since
deceased through her heirs and
legal representatives:
1A. Gp Capt. Dilip K. Dighe & Anr. : Petitioners
(Orig.Applicants)

V/s.

Shri Sharad Krishnaji Joshi,
since deceased through her heirs and
legal representatives:
1. Smt.Prema Sharad Joshi & Ors. : Respondents
(Orig. Opponents)

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Mr.S.M.Gorwadkar for the petitioners.
Mr.A.A. Valsankar i/b. Mr.Pankaj Das for the respondents.

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CORAM : S.A.BOBDE, J.

DATE : JULY 16, 2007.

P.C.

1. Rule, returnable forthwith.
Heard by consent.

2. The petitioner has challenged the order of the

District Judge, Pune, dismissing her appeal against the refusal of the trial Court to set aside the decree. The Courts below have declined to set aside the decree on the basis of the proviso to Order IX Rule 13 which reads as follows:-

> "Provided also that no such decree shall be set aside merely on the ground of irregularity of service of summons, if the Court is satisfied that the defendant knew, or but for his wilful conduct would have known, of the date of hearing in sufficient time to enable him to appear and answer the plaintiff’s claim."

The application under Order IX Rule 13 has been dismissed by giving a finding that the summons was served at the petitioner’s address at S.B.I. Colony, Paud Road, Pune, when the applicant was present at that address and personally met the bailiff. This is stated in the bailiff’s report. In the report, the bailiff has further stated that he asked the name of the applicant and she admitted her name as mentioned in the summons and, thereafter, he asked her to accept the summons and copy of the plaint and to sign the summons, but she refused to accept the same. Accordingly, the learned District Judge

has held that it is not proper and desirable to set aside the ex parte decree passed in the suit merely on the ground that there was some irregularity in the service of summons.

3. It is apparent that the petitioner knew of the matter against her and, but for her wilful conduct, would have known the date and time to enable her to appear and answer the plaintiff’s claim. In this view of the matter, there is no merit in the Writ Petition. The impugned order does not call for interference. The Writ Petition is hereby dismissed. This shall not foreclose any remedy which the petitioner may have, in law.

S.A. BOBDE, J.